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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,037	04/15/2004	Marion Grillot	040220.002	7388
34142	7590	03/09/2006	EXAMINER	
GALLAGHER & DAWSEY CO., L.P.A. P.O. BOX 785 COLUMBUS, OH 43216			EARLY, MICHAEL JACOBY	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 10/825,037	<b>Applicant(s)</b> GRILLOT, MARION	
	<b>Examiner</b> Michael J. Early	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Claim Objections**

Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 4 simply restates the recently added (amended) limitation in claim 1 (third paragraph, beginning with "wherein the at least one rigid...").

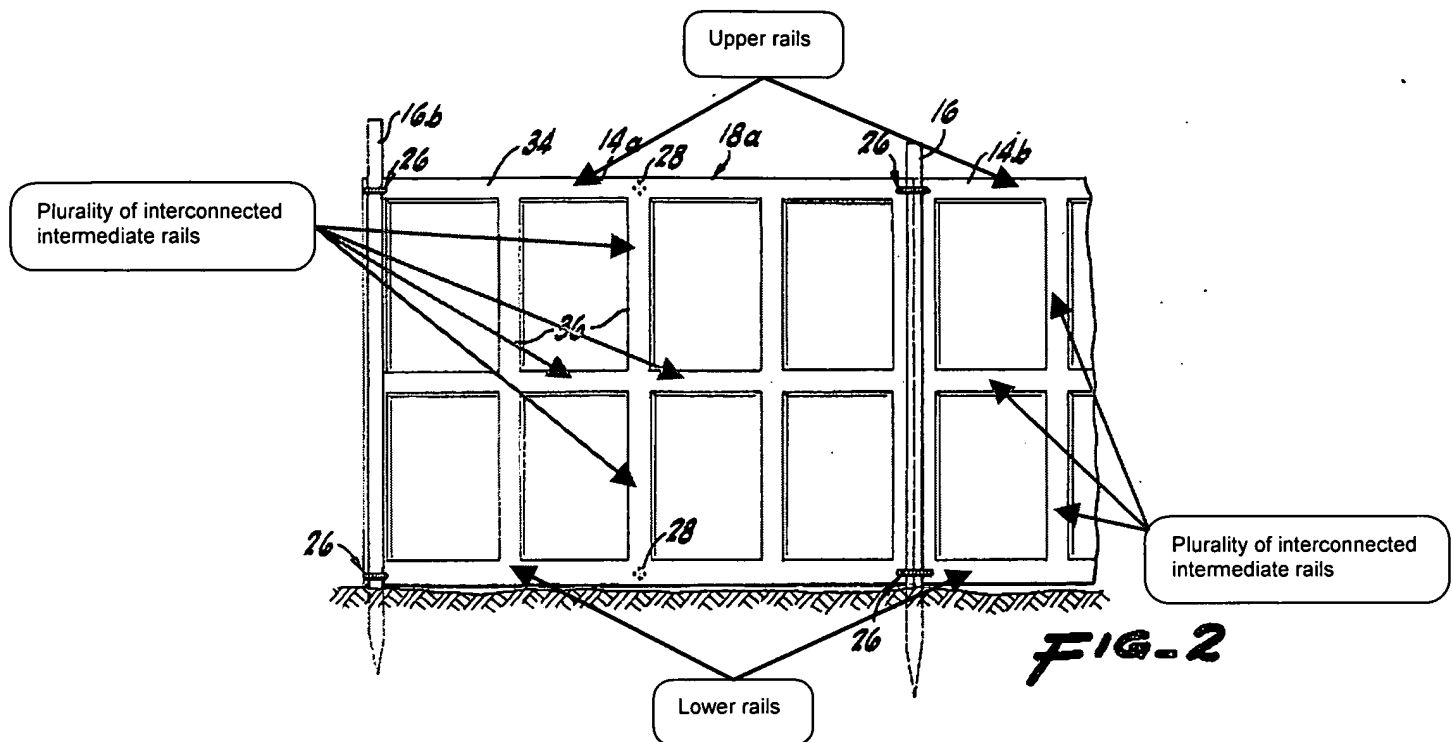
### **Claim Rejections - 35 USC § 103**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 – 5, 9, 13, 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias (U.S. 4,311,199) in view of McCallum (U.S. 4,126,116).

Elias discloses:

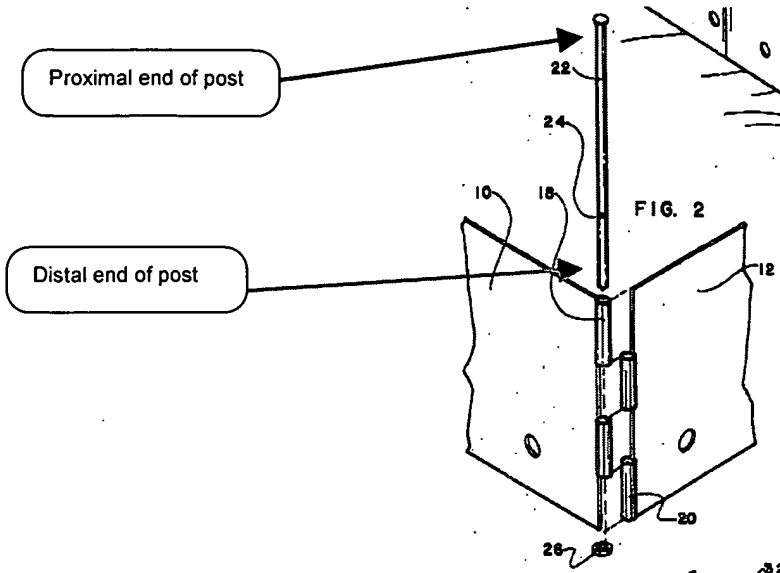
- at least one rigid safety panel (14 – modular rectangular panel) having:
  - a lower rail (as seen in the illustration of Figure 2 below);
  - an upper rail (as seen in the illustration of Figure 2 below);
  - a plurality of interconnected intermediate rails (as seen in the illustration of Figure 2 below);
- a plurality of portable interlocking rigid safety panels (14a, 14b – modular rectangular panels; Figures 2, 6), each having:
  - a lower rail (as seen in the illustration of Figure 2 below);
  - an upper rail (as seen in the illustration of Figure 2 below).



However, Elias does not disclose:

- details related to the free area ratio of the frame;
- details related to sidewall rails having pin receivers and pins;
- details related to a rigid top panel.

McCallum teaches of a portable barbecue device that is comprised of four panels that are hinged together by long posts, which are used to secure the apparatus to the ground (see Abstract). Further disclosed is that the panels (10, 12, 14, 20) have mating hinge members (18, 20) that are used in conjunction with posts (22), which are driven into the ground, to join the panels with one another (see col. 1, lines 22 – 37; Figures 1 – 3). Further disclosed is that the posts have proximal and distal ends (as seen in the illustration of Figure 2 below) McCallum further discloses that grill sections (30, 32) are placed on top of the frame (as seen in Figure 1).



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias by installing hinge members and posts and placing a grill across the top of the apparatus, as taught by McCallum, to: secure the frame in place (see col. 1, lines 33 – 37) and prevent items from inadvertently falling onto the fire, respectively.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the safety panel's free area ratio at least fifty or eighty-five percent because the Applicant has not disclosed that having free area ratios of at least fifty or eighty-five percent provides an advantage, is used for a particular purpose, or solves a stated problem (see Specification, page 8, paragraphs 1 and 2). One of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with either the implicit free area ratios taught by McCallum or the claimed fifty and eighty-five percent ratios because each free area ratio performs the same function providing a barrier around a fire.

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Therefore, it would have been an obvious matter of design choice to modify Elias in view of McCallum to obtain the limitations associated with the free area ratios as specified in claims 2, 3, 13 and 22.

Claims 6, 7, 15, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of McCallum and in further view of Park (U.S. 2,173,024).

However, Elias in view of McCallum does not disclose:

- details related to an anchor or screw placed along the distal end of at least one pin.

Park teaches of a portable cooking utensil stand that is comprised of a post (10), which has a lower end (11) that is adapted to be driven into the ground. Further disclosed is that an anchorage wing or fin (12) is placed upon the lower end of the post (see col. 2, lines 6 – 18; Figure 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of McCallum by incorporating an anchorage wing or fin along the lower end of a post, as taught by Park, to prevent the apparatus from turning and lifting out of the ground (see col. 2, lines 13 – 18).

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of McCallum and in further view of Grady et al. (U.S. 6,220,240 B1).

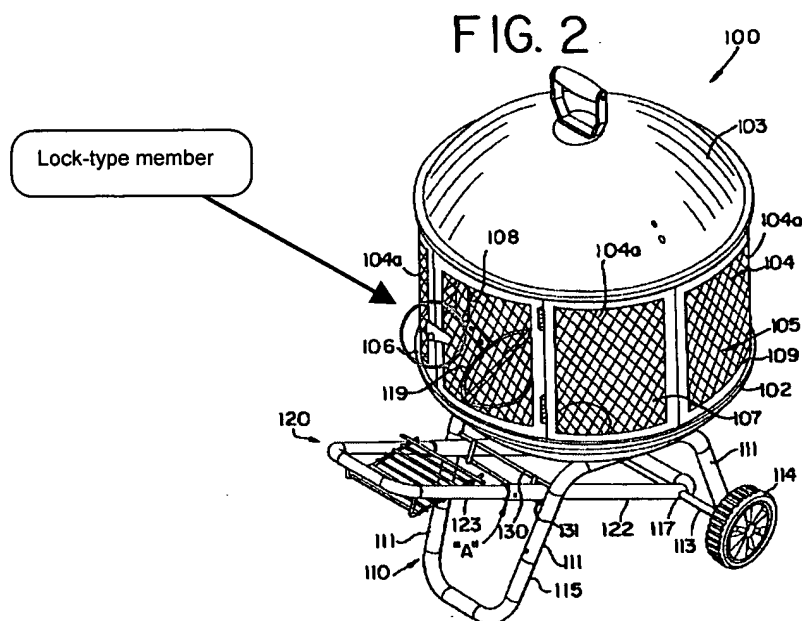
However, Elias in view of McCallum does not disclose:

- details related to a panel that is rotatable about a hinge.

Grady et al. teach of an outdoor fireplace that is comprised of a fire chamber (105) that is enclosed within a screen assembly (104), top member (102) and bottom member

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(103). Further disclosed is that the screen assembly may include a hinged door (108) that may be secured shut via a lock-type member (as seen in the illustration of Figure 2 below).



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of McCallum by incorporating a hinged door that may be secured shut, as taught by Grady et al., to provide users the ability to gain access to the fire chamber without having to dismantle the apparatus (see col. 4, lines 25 – 29).

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of McCallum and in further view of Hering (U.S. 6,220,240 B1).

However, Elias in view of McCallum does not disclose:

- details related connection devices that are incorporated along the apparatus.

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Hering teaches of a foraged fuel stove (20) that is comprised two grill wires (28, 30) that are positioned across the upper circular opening (80) of the stove. Further disclosed is that the grill wires are capable of supporting utensils (i.e. a spoon [35]) (see col. 6, lines 4 – 6; col. 7, lines 29 – 41; Figures 1, 2, 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of McCallum by incorporating grill wires along the apparatus, as taught by Hering, for the purpose of providing a location to store cooking utensils.

Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of McCallum and in further view of Soseman (U.S. 826,124).

However, Elias in view of McCallum does not disclose:

- details related connection devices that are incorporated along the apparatus.

Soseman teaches of extensible legs, which are comprised of two main sections that are telescopically connected – upper section (19) and lower section (20), that are attached to a pole (1) in an effort to keep the pole in an upright position (see page 1, lines 1 – 65; page 2, lines 12 – 41; Figure 1). Further disclosed is that a shoe or base (3) is adjustably attached to the tubular leg-sections (20) (as seen in Figures 1, 3). Soseman further discloses that to prevent any possible slipping of the shoes, stakes or pins (28) may be driven into the ground about each shoe (see page 2, lines 80 – 86).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of McCallum by incorporating extensible legs along a pole, as taught by Soseman, to provide added support to the apparatus (see page 1, lines 34 – 37).



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Claims 12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of McCallum and Soseman and in further view of Kasik (U.S. 5,542,408).

However, Elias in view of McCallum and Soseman does not disclose:

- details related to telescoping auxiliary supports connection devices that are incorporated along the apparatus.

Kasik teaches of a plurality of couplers (16) that are connected to the upper perimeter (12) of a frame (10) and rim (18) of a cooking device (20) (see col. 2, lines 46 – 55; Figure 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of McCallum and Soseman by incorporating couplers along the apparatus, as taught by Soseman, to improve the stability and rigidity of the apparatus (see col. 2, lines 54 – 67).

### **Response to Arguments**

Applicant's arguments with respect to claims 1 – 22 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJE  
3/2/06

Michael J. Early  
Patent Examiner  
Art Unit 3744

  
**CHERYL TYLER**  
SUPERVISORY PATENT EXAMINER

